

921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: KRS 13B, 205.231, 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for these violations. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

- (a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and
 - (b) Include the issuance of an order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.
- (2) The cabinet shall retain:
- (a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and
 - (b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

- (a) Initiate an administrative disqualification hearing; or
 - (b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.
- (2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.
- (3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

- (a) Cabinet's suspicion that an IPV has been committed;
 - (b) Amount and period of the overpayment for the suspected IPV; and
 - (c) Household's right to an administrative disqualification hearing.
- (2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an

IPV was committed.

(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).

(4) The cabinet shall use:

(a) The FS-80, 4/15, and the FS-80, Supplement A, 9/14; or

(b) On or after December 28, 2015, the FS-80, 12/15, and the FS-80, Supplement A, 12/15.

(5) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

(a) By certified mail, return receipt requested, to the individual; or

(b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050.

(6) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).

(7) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

(8) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

(a) Conduct an administrative disqualification hearing; and

(b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14.

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

(a) One (1) time; and

(b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing, the hearing officer shall:

(a) Conduct the hearing without the household member or representative;

(b) Consider the evidence; and

(c) Determine whether an intentional program violation was committed based on clear and convincing evidence.

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall rescind a determination of an intentional program violation and conduct a new hearing upon an order of finding if the:

(a) Household was not represented at the hearing;

(b) Individual was determined to have committed an IPV;

(c) 1. Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or

2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2)(f), by showing nonreceipt of the notice of hearing; and

(d) Appeal Board for Public Assistance is not considering the same matter.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a

disqualification is implemented based on the:

- (a) IPV being substantiated by the final order or a court of appropriate jurisdiction;
 - (b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; or
 - (c) Individual completing, signing, and returning the form FS-111, Deferred Adjudication Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.
- (2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:
- (a) Reinstate the individual, if eligible; and
 - (b) In accordance with 7 C.F.R. 273.17, restore benefits:
 - 1. That were lost as a result of the disqualification; and
 - 2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, Deferred Adjudication Disqualification Consent Agreement, in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

- (2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the:
- (a) Consequences of consenting to disqualification;
 - (b) Disqualification; and
 - (c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

- (a) Committed an IPV, as determined by:
 - 1. An administrative disqualification hearing; or
 - 2. A court; or
 - (b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.
- (2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).
- (3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.
- (4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.
- (5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

- (1) Further administrative appeal procedures shall not exist after an:
 - (a) Administrative disqualification hearing determines that an IPV was committed; or
 - (b) Individual waives the right to an administrative disqualification hearing;
- (2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and
- (3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5,

2012;

(b) "FS-80, Notice of SNAP Suspected Intentional Program Violation", 4/15;

(c) "FS-80, Notice of SNAP Suspected Intentional Program Violation", 12/15;

(d) "FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 9/14;

(e) "FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 12/15; and

(f) "FS-111, Deferred Adjudication Disqualification Consent Agreement", 9/14.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (6 Ky.R. 379; 7 Ky.R. 215; eff. 8-6-1980; 8 Ky.R. 83; 438; eff. 12-2-1981; 9 Ky.R. 507; eff. 11-3-1982; 1258; eff. 6-1-1983; 15 Ky.R. 1169; 1475; eff. 11-16-1988; 2317; 16 Ky.R. 38; 177; eff. 8-5-1989; 18 Ky.R. 902; eff. 10-16-1991; 19 Ky.R. 2138; eff. 4-21-1993; 22 Ky.R. 403; 746; eff. 9-20-1995; 2162; eff. 7-5-1996; 24 Ky.R. 774; eff. 11-14-1997; Recodified from 904 KAR 3:060, 10-30-1998; Am. 25 Ky.R. 2221; eff. 5-19-1999; 27 Ky.R. 2926; eff. 7-16-2001; 28 Ky.R. 2283; 2598; eff. 6-14-2002; TAm eff. 10-27-2004; TAm eff. 1-27-2006; 32 Ky.R. 2186; 33 Ky.R. 131; eff. 7-24-2006; 35 Ky.R. 1944; eff. 3-11-2009; 39 Ky.R. 1338; eff. 3-8-2013; 40 Ky.R. 2921; eff. 9-5-2014; 41 Ky.R. 2682; 42 Ky.R. 791; 1214; eff. 11-6-2015.)